SECTION 20
Digests

Section 20(a) - Where Applicable

The Section 20(a) presumption applies to the issue of whether the claimant's disability is work-related. *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988).

The Section 20(a) presumption applies to the issue of whether claimant's injury is work-related. *Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989).

The Section 20(a) presumption is applicable in psychological injury cases. *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 22 BRBS 340 (1989) (decision on remand); *Marino v. Navy Exchange*, 20 BRBS 166 (1988).

The Section 20(a) presumption applies to the issue of whether an injury arises in the course of employment. *Vitola v. Navy Resale & Services Support Office*, 26 BRBS 88 (1992); *Willis v. Titan Contractors, Inc.*, 20 BRBS 11 (1987).

The Section 20(a) presumption does not apply to the issues of the nature and extent of disability. *Jones v. Genco, Inc.*, 21 BRBS 12 (1988).

The Section 20(a) presumption applies to the issue of coverage under the D.C. Act. *MacRae v. MacMyer Investments, Ltd.*, 21 BRBS 332 (1988); *Norfleet v. Holladay-Tyler Printing Corp.*, 20 BRBS 87 (1987).

The Board rejects Director's assertion that the Section 20(a) presumption applies to the issue of coverage under the Act. *Davis v. Doran Co. of California,* 20 BRBS 121 (1987), *aff'd mem.*, 865 F.2d 1257 (4th Cir. 1989).

The Section 20(a) presumption does not apply to the issue of situs. *Hagenzeiker v. Norton Lilly & Co.,* 22 BRBS 313 (1989).

The Section 20(a) presumption does not apply to the legal interpretation of the jurisdictional provisions of the Act. *Stone v. Ingalls Shipbuilding, Inc.,* 30 BRBS 209 (1996);*Coyne v. Refined Sugars, Inc.*, 28 BRBS 372 (1994); *George v. Lucas Marine Construction*, 28 BRBS 230 (1994) *aff'd mem. sub nom. George v. Director, OWCP*, No. 94-70660 (9th Cir. May 30, 1996); *Palma v. California Cartage Co.*, 18 BRBS 119 (1986).

In this case involving the question of whether a marine construction worker working on a bulkhead met the status and situs tests, the Second Circuit noted its agreement with claimant that the administrative law judge erred in not applying the Section 20(a) presumption to the issue of coverage. Although it based its ruling that claimant satisfied the requirements of the Act on undisputed facts of record, it stated it would reach the same conclusion even if it determined that the presumption did not apply as the issues before the court are legal issues. *Fleischmann v. Director, OWCP*, 137 F.3d 131, 32 BRBS 28(CRT) (2d Cir. 1998), *cert. denied,* 119 S.Ct. 444 (1998).

The Board states that it need not address the general scope of Section 20(a) in coverage cases, as the courts have held that the Section 20(a) presumption is not applicable to the legal interpretation of the Act's coverage provisions. In this case there is no dispute about the facts concerning claimant's job duties. The disputed issue involves the legal import of those duties. *Watkins v. Newport News Shipbuilding & Dry Dock Co.*, 36 BRBS 21 (2002).

The Board states that the Section 20(a) presumption is inapplicable to the legal issue of coverage under the Act, nor does it provide a presumption of compensability and injury. Before Section 20(a) is applicable, claimant must establish the existence of an injury and is not entitled to an award of compensation unless he establishes the existence of a disability. *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990) (Lawrence, J., dissenting).

The Board rejects employer's contention that it should be able to use the Section 20(a) presumption against a subsequent employer to prove that it is not the responsible employer. *Lins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 62 (1992).

The Section 20(a) presumption aids a claimant in establishing the compensability of his claim, *i.e.,* whether he has a work-related injury, and does not apply to the issue of determining the identity of the responsible employer. Thus, in this two-injury case where it is alleged that claimant suffered two injuries with successive employers, the employer at the time of the first injury remains liable for the full disability unless it establishes, without benefit of the Section 20(a) presumption, that a subsequent work-related injury aggravated the employee's condition. *Buchanan v. International Transportation Services,* 31 BRBS 81 (1997).

The Section 20(a) presumption does not apply to the issues of the nature and extent of claimant's disability and therefore the issue of whether claimant is seeking total or partial disability benefits is not relevant to Section 20(a). *Carlisle v. Bunge Corp.*, 33 BRBS 133 (1999), *aff'd,* 227 F.3d 934, 34 BRBS 79(CRT) (7th Cir. 2000).

The Second Circuit rejected the first employer's argument that it was not liable for benefits because claimant's second injury with another employer aggravated the first injury. The court held that the aggravation rule is not a defense to be used by first or earlier employers as a shield from liability. In this case, where claimant and the second employer settled the claim for benefits due to the second injury, so claimant cannot recover from the last responsible employer, the court stated that claimant bears the burden of showing that his current disability can be attributed to the first injury, holding the first employer still liable. As there is less proximity between the current condition and the first injury, the Section 20(a) presumption does not apply. Thus, the court remanded the case for the administrative law judge to ascertain the extent to which the first injury contributed to the second. *New Haven Terminal Corp. v. Lake*, 337 F.3d 261, 37 BRBS 73(CRT) (2^{d} Cir. 2003).

Application of Section 20(a)

Prima Facie Case

In General

The Fifth Circuit approves the standard for invocation of the presumption as set forth in *Kelaita*, 13 BRBS 326 (1981) - claimant must establish that he has suffered a harm and that the alleged accident in fact occurred or the alleged working conditions existed. The presumption then operates to link the harm with the employment. In this case, the medical evidence that claimant suffered an aneurysm and that claimant was under stress at work is sufficient to invoke Section 20(a). *Noble Drilling Co. v. Drake*, 795 F.2d 478, 19 BRBS 6 (CRT) (5th Cir. 1986).

Prima facie elements for application of Section 20(a) presumption; claimant must show injury, *i.e.*, harm, and working conditions that could have caused the harm. A *prima facie* claim alleges an injury arising out of and in the course of employment; the mere existence of a physical impairment is plainly insufficient under *U.S. Industries/Federal Sheet Metal,* 455 U.S. 608, 14 BRBS 631 (1982). *Care v. Washington Metropolitan Area Transit Authority*, 21 BRBS 248 (1988).

The Board interprets *U.S. Industries/Federal Sheet Metal*, 455 U.S. 608, 14 BRBS 631 (1982): (a) the Court did not say that pain is not a compensable injury or that claimant must prove an injury arising out of and in the course of employment without benefit of the Section 20(a) presumption; (b) the Court stated only that a *prima facie* claim must at least allege an injury that arose in the course of employment as well as out of employment. *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988); *see also Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990) (Lawrence, J., dissenting).

The Section 20(a) presumption does not aid claimant in establishing either element of a *prima facie* claim. *Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988).

In a death benefits case, the Board holds that the administrative law judge erred in applying the Section 20(a) presumption to aid claimant in establishing that decedent was exposed to asbestos. *Martin v. Kaiser Co., Inc.*, 24 BRBS 112 (1990) (Dolder, J., concurring in the result only).

Pre-hearing statements and stipulations which indicate that causation issue has been raised are sufficient to allege an injury under the standard of *U.S. Industries/Federal Sheet Metal*, 455 U.S. 608, 14 BRBS 631 (1982). *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989).

The Board rejects employer's contention that claimant never made a claim for a low back injury and that the administrative law judge's consideration of this injury violates *U.S. Industries/Federal Sheet Metal,* 455 U.S. 608, 14 BRBS 631 (1982), by applying the presumption to a claim never alleged. The Board holds that although claimant did not allege a low back injury in her initial injury report, she did later claim that this injury is work-related thus satisfying the standard in *U.S. Industries*. *Dangerfield v. Todd Pacific Shipyards Corp.*, 22 BRBS 104 (1989).

In order to invoke Section 20(a), claimant is not required to introduce affirmative medical evidence establishing that the working conditions in fact caused the alleged harm. Claimant's theory must be go on beyond "mere fancy" - she need only show the existence of working conditions which could conceivably cause the harm alleged. In this case, the relevant medical opinions indicate a possible connection between claimant's symptoms and her employment-related exposure to chemicals; claimant thus is entitled to the presumption. *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989).

The Board rejects notion that *U.S. Industries/Federal Sheet Metal, Inc.*, 455 U.S. 608, 14 BRBS 631 (1982), stands for the propositions that pain alone is not an injury and that claimant must establish, without benefit of the Section 20(a) presumption, an injury arising out of and in the course of employment. *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990).

In order to invoke the Section 20(a) presumption, claimant is not required to introduce affirmative evidence establishing that the working conditions in fact caused the alleged harm. Rather, claimant's burden is to establish the existence of working conditions that which could have caused the harm; claimant's theory as to how the injury occurred must go beyond "mere fancy." *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990).

The District of Columbia Circuit held that in analyzing causation, the administrative law judge erred by placing the burden of proof on claimant. Claimant is entitled to the benefit of the Section 20(a) presumption of causation once the "minimal requirements" of establishing a *prima facie* case have been met. *Brown v. I.T.T./Continental Baking Co.*, 921 F.2d 289, 24 BRBS 75 (CRT)(D.C. Cir. 1990).

The Board rejected the Director's argument that the case should be remanded in order for the administrative law judge to determine whether claimant suffered an aggravation injury due to his usual work activities, holding that claimant's LS-18, statements to his physicians, post-hearing brief and Petition for Review did not indicate that claimant had asserted such a claim. The Section 20(a) presumption attaches only to claims made. *Hartman v. Avondale Shipyard, Inc.*, 23 BRBS 201 (1990), *vacated in pert. part on recon.*, 24 BRBS 63 (1990).

The Board vacates its original decision in this case with regard to its holding that claimant did not assert a claim that he experienced an aggravation injury due to his usual work activities. Board remands the case for the administrative law judge to determine whether claimant made a claim for an aggravation injury due to his usual work activities in 1984, noting there is some evidence to this effect in the record. *Hartman v. Avondale Shipyard, Inc.*, 24 BRBS 63 (1990), *vacating in pert. part on recon.* 23 BRBS 201 (1990).

The Eighth Circuit affirmed the administrative law judge's finding that claimant was entitled to invocation of the Section 20(a) presumption as claimant made a sufficient claim for a degenerative condition or cumulative trauma. *Meehan Service Seaway Co. v. Director, OWCP*, 125 F.3d 1163, 31 BRBS 114(CRT) (8th Cir. 1997), *cert. denied,* 118 S.Ct. 1301 (1998).

The First Circuit held that claimant's testimony that the shipyard was noisy, that he noticed a loss of hearing during the period he worked at the shipyard and the medical evidence consisting of three audiograms were sufficient to establish a *prima facie* case under the Act. In this case, carriers had appealed the administrative law judges' decisions as the second administrative law judge had found no hearing loss during the covered period at the shipyard but the first administrative law judge had found such hearing loss. The First Circuit upheld claimant's award as the issue of compensability was decided in claimant's favor by the first administrative law judge, whose decision was affirmed by the Board. The second administrative law judge did not have the issue of compensability before him but was merely to determine the extent of claimant's work-related hearing loss until claimant transferred to the non-covered facility. *Bath Iron Works v. Brown*, 194 F.3d 1, 33 BRBS 162(CRT) (1st Cir. 1999).

Establishing Injury

A harm has been defined as something that has unexpectedly gone wrong with the human frame. *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987).

The administrative law judge rationally discredited the credibility of claimant's testimony, and as this testimony is the only evidence that claimant sustained a harm, the administrative law judge conclusion that the evidence failed to establish the occurrence of an injury is affirmed. *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988).

A claimant's subjective complaints of pain alone may be sufficient to establish the injury element of the *prima facie* case. The Board affirms the finding of an injury even though there is no objective findings that claimant is harmed. *Harrison v. Todd Pacific Shipyards Corp.*, 21 BRBS 339 (1988).

Although the administrative law judge erred by using the Section 20(a) presumption to establish that claimant sustained bodily harm, this error is harmless, as the administrative law judge's finding that claimant was injured in May 1983 is supported by substantial evidence. *Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989).

Claimant's credible complaints of subjective symptoms and pain can be sufficient to establish the element of physical harm necessary for a *prima facie* case for Section 20(a) invocation. The Board affirms the finding of invocation on this basis, as is it uncontested that an accident occurred at work. *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

The Board affirms the finding that claimant met the "harm" element, as decedent committed suicide. It is not relevant that decedent's depression was not diagnosed or treated prior to his death, or that the medical reports relied on were generated after the death. *Konno v. Young Bros., Ltd.*, 28 BRBS 57 (1994).

Accident or Working Conditions

An "accident" has been defined as an exposure, event or episode. *Perry v. Carolina Shipping Co.,* 20 BRBS 90 (1987).

Claimant is entitled to the Section 20(a) presumption that decedent's disability and death are work-related as there is evidence that asbestos was delivered at the pier where he worked and medical records indicating he was covered with asbestos dust when the bags broke. *Suseoff v. The San Francisco Stevedoring Co.*, 19 BRBS 149 (1986).

The Board held that a psychological injury resulting from a legitimate personnel action, as the reduction-in-force in this case, is not compensable under the Act inasmuch as such an event is not a "working condition" which can form the basis for a compensable injury; to hold otherwise would hinder employer in conducting its business. The case is remanded for the administrative law judge to consider whether claimant's psychological injury was the product of cumulative stress from the job. *Marino v. Navy Exchange*, 20 BRBS 166 (1988).

Claimant is not required to show that his working conditions were unusually stressful in order to satisfy the "working conditions" element for invocation of Section 20(a). *Cairns v. Matson Terminals, Inc.,* 21 BRBS 252 (1988).

The administrative law judge rationally found that discrepancies in claimant's accounts of the manner in which the accident occurred were "within the expected range" and insignificant. The Board affirms the administrative law judge's conclusion that claimant sustained an industrial injury to his back on December 27, 1982 is supported by the medical histories and claimant's testimony. *Harrison v. Todd Pacific Shipyards Corp.*, 21 BRBS 339 (1988).

The Board affirms the administrative law judge's finding that claimant was not exposed to asbestos while he was employed by employer. 99 percent of the asbestos had been removed from the ship prior to the date claimant began work on the ship, and claimant's work was far removed from the site where the remaining 1 percent was removed. The administrative law judge's conclusion that the material which claimant and his co-worker assumed to be asbestos was most likely the newly-installed asbestos-free insulation is reasonable and also supported by substantial evidence. *Brown v. Pacific Dry Dock*, 22 BRBS 284 (1989).

The Board affirms the administrative law judge's finding that claimant did not establish the "working conditions" element as he rejected claimant's testimony about the allegedly stressful working conditions, finding it non-specific, uncorroborated and contradicted by the testimony of co-workers. The Board thus affirmed the finding that claimant's psychological condition is not work-related. *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 22 BRBS 340 (1989) (decision on remand).

The Board affirms the administrative law judge's finding that the Section 20(a) presumption is invoked as he credited claimant's and her son's testimony that decedent worked with asbestos in the shipyards and the evidence that decedent told his physicians he was exposed to asbestos. *Shaller v. Cramp Shipbuilding & Dry Dock Co.*, 23 BRBS 140 (1989).

The Board holds that the administrative law judge's failure to require claimant to prove the existence of working conditions that could have caused carpal tunnel syndrome prior to invoking the presumption is harmless error. It is undisputed that claimant's job as a commercial artist required repeated use of a scalpel-type knife and a paper cutter. *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989).

The Board held that the administrative law judge correctly determined that decedent's Jakob-Creutzfeldt disease, which caused his death, may have been related to his employment as a ship painter based on a physician's testimony that decedent's exposure to a paint chemical could have conceivably lowered decedent's resistance to the disease, thereby making him more susceptible to acquire the disease, or making him vulnerable to the rapid progression of the disease. *Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990).

The Board affirms the administrative law judge's finding that claimant failed to establish that a work accident occurred on February 8, 1984, when he allegedly fell from a scaffold. Claimant's testimony is uncorroborated by witnesses and written reports. *Hartman v. Avondale Shipyard, Inc.*, 23 BRBS 201 (1990), *vacated on other grounds on recon.*, 24 BRBS 63 (1990).

The Board affirmed the administrative law judge's finding that claimant established he was exposed to hazardous chemicals during the course of his employment, which could have caused his cancer, therefore invoking the Section 20(a) presumption. Claimant and a co-worker testified that there were toxic chemicals in the shipyard, and a doctor's testimony and report establish that claimant's allegation that his cancer is work-related goes beyond "mere fancy." *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990) (Lawrence, J., dissenting).

Claimant, diagnosed earlier as having asbestosis, suffered from chest wall pain after undergoing a lung resection for removal of a nodule which was benign and had no asbestos fibers in it (although adjacent lung tissue did show pulmonary fibrosis). The Board reversed the finding that claimant was not entitled to the Section 20(a) presumption because he failed to show that harmful working conditions caused the nodule. Claimant need only show the presence of working conditions which could have caused the harm alleged; he does not have to prove the causal nexus. Claimant invoked the presumption by proving that he has chest wall pain and that he was exposed to asbestos which could potentially cause the pain. *Everett v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 316 (1989).

The administrative law judge erred in his application of Section 20(a) by relying on the presumption to find that working conditions existed at decedent's job that could have caused his injury. This error is harmless, however, as the administrative law judge also relied on credible, uncontradicted evidence in the record which was sufficient to establish that decedent was exposed to asbestos in the course of his covered employment. These documents consist of decedent's written statements to his attorney and on his claim form, and statements to a doctor that he was exposed to asbestos. *Martin v. Kaiser Co., Inc.*, 24 BRBS 112 (1990)(Dolder, J., concurring in the result only).

The Board affirms the administrative law judge's crediting of claimant's testimony and his finding that a work accident occurred. Claimant's testimony was supported by her instructor, and the fact that her supervisor did not witness the accident does not establish that it did not occur, nor does the fact that she did not report the accident to her initial treating physicians. Claimant reported the accident to subsequent physicians. *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141 (1990).

The Board affirms the administrative law judge's finding that the "working conditions" element is satisfied. The administrative law judge properly noted that while some of the work-related stress may seem relatively mild, the issue is the effect of the incidents on decedent. As a doctor linked the depression to some of the work incidents, it is irrelevant that other actions which may not be compensable (grand jury investigation)

also may have contributed to the depression. It does not matter that the medical evidence relied upon was generated after the death. *Konno v. Young Bros., Ltd.*, 28 BRBS 57 (1994).

The Board affirmed the administrative law judge's finding that claimant failed to establish the existence of a work-related accident on January 17, 1989, as alleged by claimant, which could have caused his present back condition. The administrative law judge noted inconsistencies in claimant's testimony regarding the date of the alleged work accident, and claimant's failure to report the incident to Dr. Grimes on January 19, 1989. As claimant failed to establish an essential element of his *prima facie* case, the Board affirmed the administrative law judge's denial of the claim. *Bolden v. G.A.T.X. Terminals, Corp.,* 30 BRBS 71 (1996).

The Board affirms the administrative law judge's finding that claimant established the "working conditions" element of his *prima facie* case as he rationally credited claimant's testimony that he engaged in lifting and moving heavy materials. *Quinones v. H.B. Zachery, Inc.*, 32 BRBS 6 (1998), *rev'd on other grounds,* 206 F.3d 474, 34 BRBS 23(CRT) (5th Cir. 2000).

In a case where it is undisputed that claimant has a work-related hearing loss involving two potentially responsible employers, the Ninth Circuit held that the administrative law judge erred in denying benefits because claimant did not establish injurious stimuli at the last employer. The court holds that claimant's testimony of exposure to injurious noise is sufficient to invoke the Section 20(a) presumption that working conditions existed at the last employer that could have caused his hearing loss. As employers failed to present rebuttal evidence, the presumption controls and the last employer is liable for claimant's work-related hearing loss. *Ramey v. Stevedoring Services of America*, 134 F.3d 954, 31 BRBS 206(CRT) (9th Cir. 1998).

In this psychological injury case, the Board held that the administrative law judge erred in holding that claimant was not entitled to the Section 20(a) presumption. In his analysis, the administrative law judge erred in considering whether employer's interactions with claimant, including claimant's treatment by her supervisor, were legitimate or justified. The Board held that under *Marino v. Navy Exchange*, 20 BRBS 166 (1988), the administrative law judge should have considered whether, irrespective of disciplinary and termination procedures, the cumulative stress in claimant's working conditions could have caused or aggravated her psychological injury. Since the record contained incidents of day-to-day working conditions, rather than personnel actions, that could have caused or aggravated claimant's psychological injury, the Board held that claimant established working conditions sufficient to demonstrate a *prima facie* case, and therefore was entitled to invocation of the Section 20(a) presumption. *Sewell v. Noncommissioned Officers' Open Mess, McChord Air Force Base*, 32 BRBS 127 (1997) (McGranery, J., dissenting), *aff'd on recon. en banc,* 32 BRBS 134 (1998)(Brown and McGranery, JJ., dissenting).

The Board affirms the administrative law judge's finding that claimant established the working conditions element of his *prima facie* case, as he rationally credited claimant's testimony regarding the level of noise to which he was exposed over the contrary testimony of one of employer's witnesses. *Damiano v. Global Terminal & Container Service*, 32 BRBS 261 (1998).

The Board affirmed the administrative law judge's finding that claimant established the working conditions element of his *prima facie* case, as he rationally credited claimant's testimony regarding his stressful work environment. Moreover, the administrative law judge credited medical opinions that claimant suffered angina while working for employer, and that stress may cause such a cardiac event. *Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112 (2000), *aff'd,* 248 F.3d 54, 35 BRBS 41(CRT)(2d Cir. 2001).

The Board affirmed the administrative law judge's finding that the decedent had work-induced stress associated with unreasonable expectations for the vessel's completion and delivery based on the testimony of decedent's fellow employees and his family members. In addition, the administrative law judge found that decedent was required to work long hours and endure further stress associated with interference from the shipyard's superintendent. Work events need not be unusually strenuous to establish a compensable injury. *Bazor* v. *Boomtown Belle Casino*, 35 BRBS 121 (2001), *rev'd on other grounds,* 313 F.3d 300, 36 BRBS 79(CRT) (5th Cir. 2002), *cert. denied,* 124 S.Ct. 65 (2003).

Proper Invocation

The Board affirmed the administrative law judge's application of the Section 20(a) presumption to the determination of whether the work-related aggravation of claimant's back condition constitutes a cause of his present permanent disability. The Board noted that resolving this issue necessitates rendering a causation determination rather than a permanency determination. *Leone v. Sealand Terminal Corp.*, 19 BRBS 100 (1986).

The Board held that the administrative law judge did not err in applying the Section 20(a) presumption, since claimant had established that he suffered a harm, lung cancer, and that working conditions existed, exposure to asbestos, which could have caused the harm. *Neeley v. Newport News Shipbuilding & Dry Dock Co.*, 19 BRBS 138 (1986).

The Board finds that the administrative law judge erred in determining whether claimant's back problems and chronic pain syndrome were causally related to his employment. Because it was undisputed that claimant suffered from back pain and chronic pain syndrome and that a work accident occurred, claimant was entitled to the Section 20(a) presumption that these conditions were causally related to his employment. *Frye v. Potomac Electric Power Co.*, 21 BRBS 194 (1988).

The Board rejects employer's contention that the Section 20(a) presumption should not have been invoked. Claimant sustained a harm, chest pains at work, and it is undisputed that claimant was exposed to hazardous chemicals at work. *Peterson v. Columbia Marine Lines*, 21 BRBS 299 (1988).

The Board held that the Section 20(a) presumption applied as a matter of law, since it held that pleural plaques constitutes a harm, *i.e.*, an injury, and the parties agreed that the pleural plaques are caused by claimant's exposure to asbestos while employed with employer. *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989).

The Board held that since claimant sustained a harm, *i.e.,* asbestosis, and working conditions existed which could have caused that harm, he was entitled to the Section 20(a) presumption that his injury was work related. *Donnell v. Bath Iron Works Corp.*, 22 BRBS 136 (1989).

The Board concludes that because it is undisputed that claimant had a back condition and that claimant's 1979 work accident occurred, claimant is entitled to the Section 20(a) presumption that his back condition was causally related to his employment. *Addison v. Ryan-Walsh Stevedoring Co.*, 22 BRBS 32 (1989).

Claimant is entitled to the Section 20(a) presumption as he testified to working conditions that exposed him to industrial pollution and the medical evidence documents a pulmonary impairment causing claimant to miss work. *Janusziewicz v. Sun Shipbuilding & Dry Dock Co.*, 22 BRBS 376 (1989).

The administrative law judge erred in relying on *U.S. Industries/ Federal Sheet Metal, Inc.*, 455 U.S. 608, 14 BRBS 631 (1982) to conclude that the instant case did not present an issue for proper application of the Section 20(a) presumption. Because claimant successfully alleged that work-related chest pains constituted a part of his injury, the administrative law judge specifically found that claimant experienced sharp pains in his arm and left side of his chest while moving 55 gallon drums, and two physicians specifically related claimant's chest pains to this exertion, claimant established a *prima facie* case under Section 20(a). *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990).

The Board reversed the administrative law judge's finding that claimant was not entitled to the Section 20(a) presumption because he failed to show that harmful working conditions caused a benign tumor found in his lung. Claimant need only show the presence of working conditions which could have caused the harm, and since he proved that he was exposed to asbestos, which potentially could have caused the need for surgery which resulted in chest wall pain, *i.e.,* the harm, claimant invoked the Section 20(a) presumption. *Everett v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 316 (1989).

The Board affirms the administrative law judge's invocation of the presumption, rejecting employer's contention that claimant's carpal tunnel syndrome is not work-related because she did not introduce medical evidence linking her condition to her accident at work. Claimant need not introduce affirmative medical evidence that the working conditions in fact caused the alleged harm in order to invoke the presumption. Claimant need only establish the existence of an accident that could have caused the harm. *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141 (1990).

The administrative law judge erred in placing on claimant the burden of establishing a causal connection between the injury and the employment. The Board holds that the administrative law judge erred in not invoking the Section 20(a) presumption where decedent had lung cancer and the record contains uncontradicted evidence in the form of co-workers' testimony, that there was exposure to asbestos at employer's facility that could have caused the cancer. *Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991), *aff'd sub nom. Ins. Co. of N. America v. U.S. Dept. of Labor*, 969 F.2d 1400, 26 BRBS 14 (CRT) (2d Cir. 1992), *cert. denied*, U.S. , 113 S.Ct. 1253 (1993).

The Board affirmed the administrative law judge's invocation of the Section 20(a) presumption with regard to both claimant's back and psychological injuries. With regard to claimant's back injury, the administrative law judge found that claimant has back pain based on claimant's testimony and medical records and could have injured his back while closing a shanty door. With regard to the psychological claim, the presumption is invoked as a doctor testifies that claimant's condition was caused in part by the work injury. *Manship v. Norfolk & Western Railway Co.,* 30 BRBS 175, 179 (1996).

Claimant testified that he experienced back pain immediately after the work injury. While the court stated that this testimony "may appear incredible" given other contrary evidence of record, the administrative law judge acted within his discretion in crediting claimant's testimony and thereby finding claimant entitled to the Section 20(a) presumption. *Universal Maritime Corp. v. Moore,* 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997).

The Fifth Circuit noted that it is well settled that a heart attack suffered in the course and scope of employment is compensable even though the employee may have suffered from a related pre-existing heart condition. Accordingly, the administrative law judge erred in focusing his analysis and findings on the underlying disease; he should have considered whether claimant's employment caused his heart attack. The case thus is remanded. *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998).

The Board affirmed the administrative law judge's invocation of the Section 20(a) presumption when employer did not dispute that claimant suffered a harm, specifically a neurological condition, claimant presented evidence of his exposure to pesticide fumes during his employment, and two physicians opined that such exposure could have caused or aggravated claimant's symptoms. *O'Kelley v. Dep't of the Army/NAF,* 34 BRBS 39 (2000).

The Fifth Circuit affirmed the administrative law judge's invocation of the Section 20(a) presumption based on his finding that claimant introduced sufficient evidence to establish that his torn shoulder ligament could have been caused by an accident at work. The administrative law judge credited claimant's testimony that while he was unloading steel pipes with a forklift, the steering wheel "kicked back," catching his left arm and jerking his shoulder. Claimant testified that the pain caused him to report the incident to his supervisor a few hours after it happened, and he sought medical care, where an x-ray revealed the torn ligament in his left shoulder. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000).

The Board affirms the administrative law judge's finding that the Section 20(a) presumption is invoked as he rationally determined employer conceded invocation, and moreover, the evidence establishes that claimant had a broken wrist and his doctor stated that claimant's working conditions could have caused the injury. *Burley v. Tidewater Temps, Inc.*, 35 BRBS 185 (2002).

Where claimant testified as to his job duties and that videotapes submitted by carrier do not accurately portray all aspects of his usual work as slingman, and a physician testified that claimant described his job duties to him, the Board affirmed the administrative law judge's finding that the testimony of claimant and the physician establish that claimant's working conditions could have caused or aggravated claimant's degenerative back condition. Therefore, claimant established a *prima facie* case for invocation of the Section 20(a) presumption. *Price v. Stevedoring Services of America,* 36 BRBS 56 (2002), *aff'd, vacated and remanded, and rev'd on other grounds,* 366 F.3d 1045, 38 BRBS ___(CRT) (9th Cir. 2004) and No. 02-71207, 2004 WL 1064126 (9th Cir. May 11, 2004).

The Board held that in order for the injury to decedent to be compensable, his exposure to asbestos must have occurred, at least in part, on a covered situs, that is, a covered portion of employer's facility. Thus, while it is neither necessary that the last exposure nor the majority of the exposure comes from the covered areas, *some* exposure must have occurred within a covered area for employer to be held liable. Where there is conflicting testimony as to whether decedent was exposed to asbestos while working on the covered portions of employer's facility, the case must be remanded for a determination by the administrative law judge of where decedent's injury occurred and, thus, whether the injury is compensable. The Board notes that as decedent was a covered employee who has a work-related injury, the burden is on employer to establish that decedent was not exposed on a covered situs. *Jones v. Aluminum Co. of America*, 35 BRBS 37 (2001).

Failure to Properly Apply Section 20(a)

The Board remands the case for the administrative law judge to address the causation issue pursuant to the Section 20(a) presumption. The administrative law judge's statements regarding causation were merely *dicta*, given his findings under Section 12, and moreover, the statements relied on do not bear on the causation issue. *Horton v. General Dynamics Corp.*, 20 BRBS 99 (1987).

Any error the administrative law judge may have made in failing to expressly discuss rebuttal of the Section 20(a) presumption is harmless, because the evidence he credited is sufficient to support a finding of no causation. *Bingham v. General Dynamics Corp.*, 20 BRBS 198 (1988).

The Board affirms administrative law judge's finding that claimant's lung impairment was due to asbestos exposure while working for employer, rather than to a pre-existing obstructive condition. Although administrative law judge erred in failing to consider the Section 20(a) presumption, this error was harmless in that there is no evidence sufficient for rebuttal. *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988).

The administrative law judge did not err in applying the Section 20(a) presumption to link claimant's back condition to his work-related ankle injury. Although the administrative law judge failed to go through the prescribed analysis for the application of Section 20(a), the administrative law judge considered all relevant evidence prior to

making his supportable finding that causation is established. *Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988).

Because the record contained conflicting evidence as to the cause of claimant's back problems and his chronic pain syndrome, which the administrative law judge failed to consider in concluding that these conditions were not work-related, the Board remanded for the administrative law judge to reconsider this evidence in light of the Section 20(a) presumption and the Administrative Procedure Act. *Frye v. Potomac Electric Power Co.*, 21 BRBS 194 (1988).

Failure to apply the presumption is harmless error if the evidence relied upon to find no causal connection is sufficient to rebut the presumption. *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988).

Although the administrative law judge did not apply the Section 20(a) presumption, the Board held that any error is harmless in this case because the administrative law judge's ultimate finding that claimant's lung condition is siderosis and not asbestosis is supported by substantial evidence and is sufficient to rebut the presumption. *O'Berry v. Jacksonville Shipyards, Inc.*, 21 BRBS 355 (1988), *aff'd and modified on other grounds on recon.*, 22 BRBS 430 (1989).

The Board affirms the administrative law judge's finding that claimant's injury is work-related based on the testimony of claimant and other witnesses and on medical even though the he did not apply the Section 20(a) presumption. There is no evidence of record sufficient to rebut the presumption. *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988); *see also Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141 (1990).

As the administrative law judge did not explicitly consider causation in rendering his decision, the Board remands for the administrative law judge to consider whether employer has produced sufficient evidence to establish rebuttal and if so to weigh all of the relevant evidence as to the cause of claimant's back injury. *Addison v. Ryan-Walsh Stevedoring Co.*, 22 BRBS 32 (1989).

Where the administrative law judge finds no causation based on the record as a whole, but fails to apply the Section 20(a) presumption, the Board will affirm the administrative law judge's finding if the evidence credited by the administrative law judge is sufficient to rebut the presumption. However, if the credited evidence is insufficient to rebut, and there is no other evidence in the record to support rebuttal, then causation is established as a matter of law. In the instant case, the Board reverses the administrative law judge's denial of causation, as no medical opinion of record refuted a relationship between claimant's injury and his employment. *Burson v. T. Smith & Son, Inc.*, 22 BRBS 124 (1989).

The Board holds that the administrative law judge erred in applying a Section 7(d)(4) analysis to the issue of causation, rather than the Section 20(a) presumption. As the administrative law judge's conclusory statement that there is "substantial evidence" to

rebut the Section 20(a) presumption does not comport with the APA, the case is remanded for reconsideration without resort to Section 7(d)(4). *Dodd v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 245 (1989).

20-8d

The District of Columbia Circuit held that in analyzing causation, the administrative law judge erred by placing the burden of proof on claimant. Claimant is entitled to the benefit of the Section 20(a) presumption of causation once the "minimal requirements" of establishing a *prima facie* case have been met. The court notes that the presumption is invoked and rebutted in this case, and the court remands the case for the administrative law judge to determine whether employer's evidence establishes that claimant's elbow condition was not causally related to his work accident. *Brown v. I.T.T./Continental Baking Co.*, 921 F.2d 289, 24 BRBS 75 (CRT) (D.C. Cir. 1990).

Although the administrative law judge did not apply the Section 20(a) presumption, this error is harmless as he analyzed the evidence as a whole and his decision is supported by substantial evidence. The administrative law judge rationally determined that claimant's back pain at home in 1987 is work-related based on the medical opinions of record that the pain at home was an exacerbation of the original work injury, and on Dr. London's failure to establish that claimant's disability is not related to the original work injury. Merely because the administrative law judge termed the 1987 incident an "aggravation" does not mean claimant's current condition is not the natural and unavoidable result of the 1985 work injury. *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991).

Although the administrative law judge did not analyze the evidence in terms of the Section 20(a) presumption with regard to claimant's back condition, the Board held that any error in this regard was harmless, since the administrative law judge's finding that claimant's back condition is the natural and unavoidable result of claimant's 1977 work-related knee injury is supported by substantial evidence. *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994).

Although in the instant case the administrative law judge did not specifically invoke the Section 20(a) presumption, any error in this regard is harmless as his decision is supported by substantial evidence; he considered the relevant evidence and applied the appropriate legal standard in determining that claimant's disability was the natural and unavoidable result of the work injury and was not due to other causes. *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995).

The administrative law judge erred in placing the burden of proof on claimant to prove that his psychological condition is work-related and failed to apply the Section 20(a) presumption to this issue. The Board holds that the Section 20(a) presumption is invoked as a matter of law as it is uncontested that claimant has a psychological condition and as two doctors stated that the work accident could have played a role in the condition. The Board remanded the case to the administrative law judge to make a determination as to whether the presumption is rebutted and, if so, as to whether a causal relationship is established based on the record as a whole. *Hargrove v. Strachan Shipping Co.*, 32 BRBS 11, *aff'd on recon.,* 32 BRBS 224 (1998).

On reconsideration, the Board rejected employer's contention that the Board applied an improper burden of proof on the issue of causation, and affirmed its holding that the administrative law judge must consider on remand whether the Section 20(a) presumption is rebutted and, if so, whether a causal relationship is established based on the record as a whole. *Hargrove v. Strachan Shipping Co.*, 32 BRBS 224 (1998), *aff'g on recon.* 32 BRBS 11 (1998).

The court held that the Board correctly determined that the administrative law judge's failure to discuss the aggravation rule is harmless error, inasmuch as the administrative law judge, after weighing the evidence relevant as to causation, rationally rejected the medical opinion of claimant's treating doctor, the only evidence of record sufficient to support a finding of causation under an aggravation theory. *Hice v. Director, OWCP,* 48 F.Supp.2d 501 (D. Md. 1999).

The administrative law judge did not address the issue of whether claimant sustained injuries to his left knee or back as a sequela of the initial work injury, and thus the Board remanded the case for further consideration pursuant to Section 20(a). *Seguro v. Universal Maritime Service Corp.*, 36 BRBS 28 (2002).

Any error the administrative law judge made in not discussing rebuttal is harmless, since in discussing causation/aggravation based on the record as a whole, the administrative law judge relied on the opinion of claimant's treating physician which he found credible and well-reasoned, in which the physician stated that claimant's back disability is wholly attributable to the industrial injury, thus establishing a causal connection. *Price v. Stevedoring Services of America,* 36 BRBS 56 (2002), *aff'd in pert. part and rev'd on other grounds,* No. 02-71207, 2004 WL 1064126 (9th Cir. May 11, 2004), and *aff'd and rev'd on other grounds,* 366 F.3d 1045, 38 BRBS ___(CRT) (9th

Cir. 2004).

Rebutting the Presumption

In General

Once claimant shows physical harm and a work-related accident which could have caused the harm, the Section 20(a) presumption applies, and it is employer's burden to rebut the presumption by introducing substantial evidence to show claimant's injury did not arise out of employment. When employer produces such substantial evidence, the presumption drops out of the case, and the administrative law judge must weigh all of the evidence relevant to the causation issue. *MacDonald v. Trailer Marine Transport Corp.*, 18 BRBS 259 (1986), *aff'd mem. sub nom. Trailer Marine Transport Corp. v. Benefits Review Board*, 819 F.2d 1148 (11th Cir. 1987).

The Board remands the case for the administrative law judge to determine if employer rebutted the Section 20(a) presumption by showing that exposure to asbestos did not cause the lung cancer. *Susoeff v. The San Francisco Stevedoring Co.*, 19 BRBS 149 (1986).

An opinion that is equivocal as to etiology is insufficient to support rebuttal of the Section 20(a) presumption. The Board holds that one doctor's opinion cannot rebut as he stated that claimant's fibrosis was "perhaps" related to previous inflammatory disease. *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

The Section 20(a) presumption is rebutted if employer introduces substantial evidence that claimant's condition was not caused or aggravated by her employment. The Board remands the case for consideration of rebuttal, noting that the record contains evidence that claimant's psychiatric condition is unrelated to her employment and that a doctor was unable to state with certainty that claimant's physical condition is work-related. *Dangerfield v. Todd Pacific Shipyards Corp.*, 22 BRBS 104 (1989).

The Board reverses the finding of rebuttal since the administrative law judge based his finding on the ground that no forthright medical opinion linked claimant's injury to his employment. The administrative law judge erred by placing the burden on claimant to establish that his injury was work-related, rather than on employer to establish that the injury is not work-related. No medical opinion of record states that claimant's injury was not caused or aggravated by his employment. The administrative law judge's reliance on the negative evidence of a three-year gap between the last day of claimant's employment and claimant's first post-employment complaint of injury is insufficient evidence, by itself, to establish rebuttal. *Gencarelle v. General Dynamics Corp.*, 22 BRBS 170 (1989), *aff'd*, 892 F.2d 173, 23 BRBS 13 (CRT) (2d Cir. 1989).

Employer can rebut the presumption in a case involving a subsequent injury by showing that claimant's disabling condition was caused by a subsequent non work-related event, provided employer also proves that the subsequent event was not caused by claimant's work-related injury. *Bass v. Broadway Maintenance,* 28 BRBS 11 (1994); *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989).

The Board held that the Supreme Court's decision in *Director, OWCP v. Greenwich Collieries*, ___ U.S. ___, 114 S.Ct. 2251, 28 BRBS 43 (CRT) (1994), does not change or affect the law regarding invocation and rebuttal of the Section 20(a) presumption. Therefore, it rejected claimant's contention that loss of the "true doubt" rule increases the import of the presumption of causation, requiring an employer to present a greater "quantum of evidence" to rebut it. *Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18 (1995) (Decision on Recon.).

Where claimant initially injured his back in 1979 and then worked until herniated discs prevented his continued employment in 1985, the Board concluded that negative evidence, which supplements "positive" medical evidence and a credibility determination, is sufficient to rebut the Section 20(a) presumption. It noted that this case contains an unequivocal medical opinion of no causation, a rational credibility determination crediting that doctor, and negative evidence of the absence of back pain for six years following the initial injury. Therefore, the Board re-affirmed its decision that the administrative law judge rationally determined that claimant's 1985 condition was not caused by his 1979 work injury. *Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18 (1995) (Decision on Recon.).

The Fifth Circuit held that while the administrative law judge blended the second and third steps regarding causation, *i.e.*, whether employer rebutted the Section 20(a) presumption and weighing the evidence of causation as a whole, this departure was not in error, because if the administrative law judge found that the evidence defeated the claim, therefore, he surely he found it was sufficient to rebut the presumption. *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998).

The Seventh Circuit holds that the burden for establishing rebuttal at Section 20(a) is a burden of production only, as the burden of persuasion rests at all times on the claimant, by force of §7(c) of the APA. In order for employer to satisfy its burden at Section 20(a), it is required to introduce substantial evidence which is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The court states that the rejection of vague and speculative evidence at rebuttal is not inconsistent with this standard. *American Grain Trimmers, Inc. v. Director, OWCP* [*Janich*], 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999)(*en banc*), *cert. denied*, 120 S.Ct. 1239 (2000).

The Fifth Circuit holds that the Board erred in stating that employer is required to "rule out" the possibility of a causal connection in order to rebut the Section 20(a) presumption. The plain language of the statute requires employer to produce "substantial evidence to the contrary" and this burden is lighter than "ruling out." Moreover, employer's burden is one of production rather than persuasion. The court nonetheless affirms the award of benefits as the administrative law judge permissibly credited evidence that claimant's condition is due to the work injury. *Conoco, Inc. v. Director, OWCP,* 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999).

The Board reversed the administrative law judge's finding that employer failed to meet its burden on rebuttal. Although the Eleventh Circuit has espoused a "ruling out" standard when addressing the issue of rebuttal, *Brown*, 893 F.2d 294, 23 BRBS 22(CRT) (11th Cir. 1990), the Board holds that a physician's unequivocal testimony regarding the lack of a causal nexus, rendered to a reasonable degree of medical certainty, is sufficient to sever the causal relationship between claimant's employment and his harm, even when the physician admits that in the medical profession there is no absolute certainty. Employer also is not required to establish another agency of causation in order to rebut the Section 20(a) presumption. *O'Kelley v. Dep't of the Army/NAF,* 34 BRBS 39 (2000).

The Fifth Circuit holds that, on rebuttal, the employer cannot be made to "rule out" every conceivable connection between the death and the employment. Reiterating its position in *Conoco*, 194 F.3d 684, 33 BRBS 187(CRT), the Fifth Circuit holds that to rebut the Section 20(a) presumption, employer need only submit substantial evidence that the injury was not work-related. Requiring medical opinions that "affirmatively state" or "unequivocally state" creates a higher evidentiary standard than that stated in the statute. The court held that the administrative law judge properly found rebuttal in this case, as decedent's heart attack began at home and the credited evidence stated that it would have progressed regardless of where he was or what he was doing. Thus, the aggravation rule is inapplicable as the fact that the death occurred at work is mere coincidence. *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir. 2003), *cert. denied*, 124 S.Ct. 825 (2003).

Failure to Rebut Section 20(a)

The Board affirms the administrative law judge's finding that the presumption is not rebutted as he found the medical evidence to be inconclusive in that although each physician stated that claimant's injury was not caused by the work accident, each acknowledged that there was a possibility that the injury was related to the accident. The Board states that the administrative law judge could have found this evidence sufficient to rebut, but his inferences are reasonable. *MacDonald v. Trailer Marine Transport Corp.*, 18 BRBS 259 (1986), *aff'd mem. sub nom. Trailer Marine Transport Corp. v. Benefits Review Board*, 819 F.2d 1148 (11th Cir. 1987).

The Board affirms the finding of causation as there is no evidence that claimant's fall did not cause his back injury, nor is there evidence of an injury prior to the one at issue or of a subsequent fall that could account for the herniated disc. *Williams v. Nicole Enterprises, Inc.*, 19 BRBS 66 (1986).

Where claimant had an on-the-job seizure causing him to fall and sustain an injury to his head and hands, the administrative law judge properly found that claimant's injury was work-related pursuant to Section 20(a) even though the seizure was not induced by a condition of his employment. No evidence was presented to rule out the possibility that claimant's fall at work caused his condition. *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987).

The Section 20(a) presumption applies to the issue of whether an injury arises in the course of employment. The fact that an activity is not authorized is not sufficient alone to sever the connection between the injury and the employment. Employer did not present any evidence that claimant's work activity at the time of his injury was unrelated to his employment. Since there was no evidence of record directly controverting the presumption, claimant's injury arose in the course of his employment as a matter of law. *Willis v. Titan Contractors, Inc.*, 20 BRBS 11 (1987).

The D.C. Circuit held that employer failed to rebut the presumption, afforded by Section 20(a) of the Act, that employee's non-work-related pre-existing disability, when combined with his work-related lung disease, produced a fully compensable permanent total disability, by failing to offer any general evidence that the employee's non-work-related condition did not pre-exist or occur simultaneously with his work-related lung disease. *Bechtel Associates, P.C. v. Sweeney*, 834 F.2d 1029, 20 BRBS 49 (CRT)(D.C. Cir. 1987).

If the evidence relied upon to find no causal connection is not sufficient to rebut the presumption, and no other evidence in the record is sufficient, causation is established as a matter of law. *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988).

The Board holds that employer failed to rebut the Section 20(a) presumption as a matter of law as all doctors' opinions of record agree that claimant's chest pains were at least in part related to stress experienced at work. *Care v. Washington Metropolitan Area Transit Authority*, 21 BRBS 248 (1988).

Since employer failed to produce evidence ruling out a causal relationship sufficient to rebut the Section 20(a) presumption, the Board reversed the administrative law judge's finding that claimant failed to establish the existence of a work-related injury. *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989); *Hite v. Dresser Guiberson Pumping,* 22 BRBS 87 (1989); *Clophus v. Amoco Production Co.,* 21 BRBS 261 (1988) (affirming the finding of a causal relationship based on the absence of rebuttal evidence).

The Board reverses the finding that the presumption is rebutted. The doctor's opinion relied on states that claimant's impairment is due in part "to the possibility of his having minimal asbestosis." This opinion is not affirmative evidence that claimant's condition was not caused, in any part, by asbestos exposure. *Donnell v. Bath Iron Works Corp.*, 22 BRBS 136 (1989).

The Board affirms the causation finding as there is no evidence that claimant's absences from work were not due to exposure to industrial pollution. The uncontradicted evidence is that claimant's underlying pulmonary disease is aggravated by this exposure. *Janusziewicz v. Sun Shipbuilding & Dry Dock Co.*, 22 BRBS 376 (1989).

The Board affirms the administrative law judge's finding that the presumption is not rebutted with regard to claimant's psychological condition. Employer's first two theories regarding claimant's limited exposure to the conditions alleged to have caused the symptoms relate only to the physiological basis for the complaints, and not the psychiatric basis. The administrative law judge further rejected the doctor's opinion that stated that claimant's symptoms are not work-related for rational reasons. The Board also affirmed the administrative law judge's finding that the presumption is not rebutted with regard to the carpal tunnel syndrome by merely suggesting that this condition frequently occurs in women of claimant's age without any known cause. The

presumption is not rebutted by mere hypothetical possibilities, or by suggesting an alternate way that claimant's injury might have occurred. *Sinclair v. United Food & Commercial Workers*, 23 BRBS 148 (1989).

The Eleventh Circuit affirms the administrative law judge's finding of causation as none of the physicians of record ruled out the possibility of a causal connection between the accident and claimant's disability. The court stated that the presumption is not rebutted in this case as there is no direct, concrete evidence ruling out a causal relationship. *Brown v. Jacksonville Shipyards Inc.*, 893 F.2d 294, 23 BRBS 22 (CRT) (11th Cir. 1990).

Although administrative law judge erred in failing to consider rebuttal when he was instructed to do so on remand, the Board holds that it is not necessary to again remand for consideration of this issue as there is no evidence of record sufficient for rebuttal where all doctors rendering relevant opinions recognized that claimant's chest pains were due at least in part to exertional stress related to his work. *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990).

Employer failed to rebut the presumption that claimant's cervical disk problems are related to his work injury based solely on claimant's failure to inform his physicians of his injury. The administrative law judge also did not err in finding a doctor's statement, that he would have difficulty relating claimant's neck problems to being struck on the hand with a pail, insufficient to rebut the presumption. The administrative law judge concluded that this statement is insufficient to preclude the possibility that claimant's neck condition was caused or aggravated by other aspects of his accident. *Alexander v. Ryan-Walsh Stevedoring Co.*, 23 BRBS 185 (1990), *vacated and remanded mem.*, 927 F.2d 599 (5th Cir. 1991).

The Board held that where there is no indication in the record that the physician who filled out a disability form and checked the box indicating claimant's disability did not arise out of his employment nor was it caused by occupational disease, was aware of claimant's chemical exposure, the administrative law judge's error in failing to consider the form is harmless. The presumption is rebutted on other evidence. *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990)(Lawrence, J., dissenting).

20-14f

Although the administrative law judge identified claimant's harm as the pain resulting from surgery, he erred in focusing on whether the nodule removed during the surgery resulted from asbestos exposure rather than on whether there was a causal nexus between claimant's surgery, which caused the harm, and his asbestos exposure. Employer failed to rebut the presumption since the evidence is uncontradicted that claimant was advised to undergo surgery at least in part as a result of his previously diagnosed asbestosis and asbestos exposure. Therefore, the Board holds that the surgery was employment-related and that any complications or conditions stemming from the surgery, including chest wall pain, are work-related. *Everett v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 316 (1989).

The Board affirms the administrative law judge's conclusion that employer failed to rebut the presumption. The Board held that the administrative law judge rationally discredited the physician who opined that claimant's injury was not work-related because the opinion was based on the erroneous assumptions that the specific incident at work did not occur and that claimant was doing the same work for employer for her entire period of employment. *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141 (1990).

The Board holds that the presumption is not rebutted, and that causation is established as a matter of law, as employer failed to rule out that decedent's cancer was caused, contributed to or accelerated by asbestos exposure during his employment with employer, even though a doctor stated that smoking was the primary cause of the disease. *Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991), *aff'd sub nom. Ins. Co. of N. America v. U.S. Dept. of Labor,* 969 F.2d 1400, 26 BRBS 14 (CRT) (2d Cir. 1992), *cert. denied*, U.S. , 113 S.Ct. 1253 (1993).

The Board affirms the administrative law judge's finding that the Section 20(a) presumption was not rebutted, as no doctors ruled out a relationship between claimant's work injury and surgery at C5-6 and his current complaints at C6-7. One doctor stated the work accident did not play a "significant" role in claimant's condition, but does not state that it played no role. Two other doctors testified that the C5-6 surgery created a risk of a problem at C6-7. Thus, causation is established as a matter of law. *Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92 (1991), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993).

The Board affirms the administrative law judge's finding that alleged discrepancies in testimony and medical evidence are insufficient to establish rebuttal of the Section 20(a) presumption in this case. The administrative law judge considered the facts that claimant did not file an accident report, that he did not see a doctor for two months after the accident, and that he continued working, but found that they are not determinative. The administrative law judge found that claimant did not initially recognize the severity of his injury, that a co-worker and a foreman were aware of the incident, and that a doctor's opinion supported the finding of a causal relationship. The finding of a causal relationship is affirmed. *Simonds v. Pittman Mechanical Contractors, Inc.*, 27 BRBS 120 (1993), *aff'd sub nom. Pittman Mechanical Contractors, Inc. v. Director, OWCP*, 35 F.3d 122, 28 BRBS 89 (CRT) (4th Cir. 1994).

The Board affirmed the administrative law judge's finding that claimant's back condition is the natural and unavoidable result of the work-related knee injury as the only doctors of record opined that claimant's back symptoms were aggravated by the gait disturbance caused by the knee injury. The presumption is not rebutted as employer offered no evidence severing the causal connection between the knee injury and the back condition. *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994).

The Board affirms the administrative law judge's finding that employer did not rebut the Section 20(a) presumption where the doctor on whom employer relies stated that decedent's working conditions could have been aggravating factors in decedent's depression and suicide. *Konno v. Young Bros., Ltd*, 28 BRBS 57 (1994).

The Board reverses the finding of rebuttal. The doctor on whom the administrative law judge relied stated that the effect of workplace noise on claimant's hearing could not be calculated and thus he could not determine whether noise exposure contributed to claimant's hearing loss. A physician's opinion that workplace noise may have played a part in claimant's hearing loss does not meet employer's burden of demonstrating that claimant's work environment did not aggravate or contribute to his hearing loss, and therefore, does not establish rebuttal of the Section 20(a) presumption. *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995).

20-14h

The Board rejected employer's contention that rebuttal was established because claimant's disability was due only to a temporary aggravation of previous injuries. The evidence supports the finding that the prior injuries were not more than temporarily disabling, and there is no evidence that the work injury itself was only temporarily disabling. Moreover, there is no specific and comprehensive evidence severing the causal connection because the doctors' opinions either relate claimant's disability to the work injury or are too speculative and equivocal to rebut the Section 20(a) presumption. *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995).

In a claim for a back injury, the administrative law judge found rebuttal established based on the testimony of claimant's supervisor that claimant was having back difficulties on the day of the work accident, but ultimately found causation established based on the crediting of claimant's co-worker that claimant was not having any back problems before the alleged accident. The Board held that the supervisor's testimony fails to sever the causal connection, but that any error the administrative law judge may have committed in finding rebuttal was harmless since employer failed to establish that the administrative law judge's crediting of the co-worker was irrational. With regard to claimant's psychological injury, the Board affirmed the administrative law judge's finding that employer failed to establish rebuttal, as there was no evidence to suggest that the psychological injury was not related to the back injury. *Manship v. Norfolk & Western Railway Co.*, 30 BRBS 175, 179 (1996).

Where claimant injured her back in 1986 while working for employer, and again in 1992 while working for a different, non-maritime, employer, the Board held that employer was liable for benefits because the evidence of record indicated that the current disability was caused by both injuries, and neither doctor credited by the administrative law judge attributed the current disability to the 1992 injury alone. Therefore, as the current disability was caused, at least in part, by the 1986 injury, and because there was no evidence which apportioned the disability between the two injuries, the Board affirmed the administrative law judge's finding that employer did not rebut the Section 20(a) presumption as well as his decision holding employer liable for the entire disability. *Plappert v. Marine Corps Exchange*, 31 BRBS 13 (1997), *aff'd on recon. en banc*, 31 BRBS 109 (1997).

On *en banc* reconsideration in this case, the Board distinguished this case from several other subsequent injury/natural progression cases. It held that, while it is true claimant's 1992 herniation, which occurred subsequent to her covered employment, was not the natural result of her 1986 work-related back injury, employer is liable for benefits for claimant's entire 1992-1994 disability, as it was the result of the 1992 herniation as well as the natural progression of the chronic osteophytic and spondylitic changes claimant suffers because of her 1986 work injury. Further, because no doctor apportioned the disability between the two injuries, the Board reaffirmed the panel's conclusion that employer is liable for the entire disability. *Plappert v. Marine Corps Exchange*, 31 BRBS 109 (1997), *aff'g on recon. en banc* 31 BRBS 13 (1997).

The First Circuit affirmed the Board's decision that employer failed to rebut the Section 20(a) presumption because it did not present evidence that claimant's medical condition was not caused or aggravated by his exposure to asbestos at employer's facility. Employer had contended that claimant's condition as evidenced on x-rays taken in 1982 could not have been caused by his 1981 exposure; however, it did not present any evidence that the progression of the condition shown on 1989 x-rays was not due to work-related asbestos exposure. The court stated that the rebuttal standard does not require employer to rule out any possible causal connection between claimant's employment and his condition, as this goes beyond the substantial evidence standard. In this case, however, employer submitted no evidence. *Bath Iron Works Corp. v. Director, OWCP,* 109 F.3d 53, 31 BRBS 19 (CRT)(1st Cir. 1997).

The Board affirms the administrative law judge's finding that employer did not rebut the Section 20(a) presumption, as the doctors employer relied upon conceded that claimant's condition could have been aggravated by claimant's work. As the doctors' opinions do not rule out aggravation, they are insufficient to rebut the Section 20(a) presumption. *Quinones v. H.B. Zachery, Inc.*, 32 BRBS 6 (1998), *rev'd on other grounds,* 206 F.3d 474, 34 BRBS 23(CRT) (5th Cir. 2000).

Employer's argument that claimant's SLAP lesion was caused by something occurring after September 15, 1993, rather than the June 1992 work accident, is rejected, as the Section 20(a) presumption is not rebutted where employer does not provide concrete evidence but merely suggests alternate ways that claimant's injury might have occurred. *Delay v. Jones Washington Stevedoring Co.*, 31 BRBS 197 (1998).

The case law pertaining to intervening cause rests on an interpretation of the Section 2(2) term "or as naturally or unavoidably results from such accidental injury," and requires that an employee show a degree of due care in regard to his work injury and take reasonable precautions to guard against re-injury. The duty of care required of an employee to guard against a subsequent injury does not apply to the initial work injury; Section 4(b) of the Act eliminates negligence or fault as a consideration with respect to the work event which caused the primary injury. Thus, the Board, holding that the administrative law judge erroneously applied intervening cause case law in considering the cause of an initial work injury reversed the administrative law judge's finding that the Section 20(a) presumption was rebutted based on his finding that claimant's intentional misconduct was the cause of his injury. *Jackson v. Strachan Shipping Co.,* 32 BRBS 71 (1998)(Smith, J., concurring & dissenting).

Inasmuch as there was no medical evidence in the record suggesting that claimant's psychological condition was not related, at least in part, to her work environment, the

Board held that employer did not rebut the Section 20(a) presumption, and that claimant's psychological injury was work-related as a matter of law. *Sewell v. Noncommissioned Officers' Open Mess, McChord Air Force Base*, 32 BRBS 127 (1997)(McGranery, J., dissenting), *aff'd on recon. en banc*, 32 BRBS 134 (1998) (Brown and McGranery, JJ., dissenting).

20-14hhh

The Board affirmed the administrative law judge's determination that employer did not establish rebuttal of the Section 20(a) presumption in this hearing loss case. The administrative law judge rationally rejected employer's assertion that its noise surveys, documenting the absence of noise at or in excess of that proscribed by OSHA, are sufficient to establish rebuttal of the Section 20(a) presumption, concluding that this evidence cannot demonstrate the absence of a work-related injury. The administrative law judge further rejected Dr. Katz's opinion regarding causation as it was based in part on employer's noise surveys, and because there is no underlying evidence in the record to support his opinion that either claimant's heart surgery and/or his age adversely affected his hearing. Lastly, the administrative law judge rejected lay testimony regarding noise levels at employer's facility as the individual did not begin to work for employer until 1987, well after claimant's greatest exposure to injurious noise levels occurred. *Damiano v. Global Terminal & Container Service*, 32 BRBS 261 (1998).

The Board affirmed the administrative law judge's determination that employer failed to establish rebuttal of the Section 20(a) presumption in a hearing loss case. The administrative law judge rationally rejected employer's assertion that its noise surveys, documenting the absence of noise in excess of that proscribed by OSHA, as such evidence cannot demonstrate the absence of a work-related injury incurred over the course of claimant's employment. The Board further held that the administrative law judge rationally found that claimant's testimony that electric winches are 50 to 60 percent quieter than steam winches was insufficient to establish rebuttal, as claimant's lay testimony cannot establish with specificity the exact level of noise exposure which he experienced. *Everson v. Stevedoring Services of America*, 33 BRBS 149 (1999).

The Seventh Circuit affirms the finding that employer did not establish rebuttal of the Section 20(a) presumption. Although the doctor stated that decedent's work did not cause his death, he also stated that he did not know what work the decedent had been performing in the days and weeks preceding his death. Thus, the administrative law judge did not err in finding it was not "substantial evidence to the contrary." *American Grain Trimmers, Inc. v. Director, OWCP* [*Janich*], 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999)(*en banc*), *cert. denied*, 120 S.Ct. 1239 (2000).

The Fifth Circuit affirmed the administrative law judge's finding that LIGA failed to rebut the Section 20(a) presumption with substantial evidence that claimant's condition was not caused or aggravated by his employment. *Louisiana Ins. Guar. Ass'n v. Bunol*, 211 F.3d 294, 34 BRBS 29(CRT) (5th Cir. 2000).

The Board affirmed the administrative law judge's finding that Dr. Ellis's opinion is insufficient to sever the connection between the displacement of claimant's left wrist fracture and claimant's employment and thus is insufficient to establish rebuttal of the Section 20(a) presumption as it does not state that claimant's wrist condition was not aggravated by his employment. *Burley v. Tidewater Temps, Inc.*, 35 BRBS 185 (2002).

20-14hhhh

The Fifth Circuit affirmed the administrative law judge's finding that employer did not introduce substantial evidence to rebut the Section 20(a) presumption. Employer alleged that the forklift claimant was operating could not have "kicked back" the way claimant alleged. The court held that the record failed to prove what type of fork-lift claimant was operating on the day of his accident, and employer did not introduce any records which reflected the particular forklifts used on each ship. The court noted that although the record clearly indicated that claimant reported the accident to his supervisors, some hours after the accident happened, employer did not examine the forklifts until two days after the accident. Moreover, the manager of the crane and gear department acknowledged that he did not record the identification number of the forklift that claimant operated on the day of the accident. Finally, the court the held that even assuming, *arguendo,* that claimant was operating a hydraulic forklift, claimant's testimony that his forklift was immobilized by the tunnage is consistent with a circumstance which employer's expert admitted could cause even a hydraulicly steered forklift to produce a kick back. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000).

As no doctor affirmatively stated that decedent's cancer was not caused in part by asbestos exposure, the medical opinions are insufficient to rebut the Section 20(a) presumption under either the "ruling out" standard of the 11th Circuit, or the "substantial evidence" statutory standard. Moreover, the absence of diagnostic evidence of asbestosis does not constitute substantial evidence sufficient to rebut the presumption, in that the physicians' opinions allow for the possibility of the exposure to asbestos to have contributed to decedent's cancer and subsequent death. Therefore, the Board reverses the administrative law judge's decision and holds that decedent's death was work-related as a matter of law. *Jones v. Aluminum Co. of America*, 35 BRBS 37 (2001).

20-14hhhhh

Presumption Rebutted

The Board vacated the administrative law judge's summary finding that a medical opinion is "unpersuasive" and therefore cannot establish rebuttal of the Section 20(a) presumption, and accordingly remanded the claim for the administrative law judge to weigh all the relevant evidence without the benefit of the presumption. The conclusion that an opinion in "unpersuasive" is not relevant to rebuttal if the opinion disproves a causal relationship. *Leone v. Sealand Terminal Corp.*, 19 BRBS 100 (1986).

The administrative law judge erred in finding that Section 20(a) was rebutted on the grounds that the reporting physicians' opinions were unsupported by a definitive scientific study on the co-carcinogenic effects of smoking and asbestos exposure. The opinions are sufficient to rebut as they rule out a causal relationship between claimant's cancer and asbestos exposure. *Neeley v. Newport News Shipbuilding & Dry Dock Co.*, 19 BRBS 138 (1986).

The Fifth Circuit affirms the finding of rebuttal based on medical opinions that unequivocally state that claimant's aneurysm is unrelated to his work. *Noble Drilling Co. v. Drake*, 795 F.2d 478, 19 BRBS 6 (CRT) (5th Cir. 1986).

The Eighth Circuit affirms the administrative law judge's determination that employer introduced substantial evidence to rebut the Section 20(a) presumption where claimant's injured eyes and ears were examined at the time of the injury and found to be functioning normally. The first eye problem was noticed two years later, and this negative evidence is sufficient to rebut the presumption. There is a medical report that claimant's hearing loss is not related to the facial trauma. *Arrar v. St. Louis Shipbuilding Co.*, 837 F.2d 334, 20 BRBS 79 (CRT) (8th Cir. 1988).

Where claimant testified that the overall stress of his job but no one stressful incident had caused or aggravated his on-the-job heart problems, the D.C. Circuit held that a doctor's opinion that claimant's disabling heart condition did not result from stress but from his atherosclerosis constituted substantial evidence in support of the administrative law judge's finding of Section 20(a) rebuttal. *Whitmore v. AFIA Worldwide Insurance*, 837 F.2d 513, 20 BRBS 84 (CRT) (D.C. Cir. 1988).

The Board agrees with employer that the administrative law judge erred in finding that the presumption is not rebutted as two doctors stated that claimant's chest pains are not related to exposure to chemicals at work. The administrative law judge's error is harmless, however, as he relied on substantial evidence to find that claimant's condition is work-related. *Peterson v. Columbia Marine Lines*, 21 BRBS 299 (1988).

The Board affirmed the administrative law judge's finding that the injury to claimant, an off-duty bartender injured during a fight which began on employer's premises, did not arise out of or in the course of his employment, and that there was substantial evidence to rebut the Section 20(a) presumption. The Board noted that although claimant may have initially responded to employer's request to protect patrons and property in the event of an altercation, so that he was theoretically on duty, claimant acted voluntarily and beyond the scope of that request by going across the street to assist a patron who had run out of the bar with a two-by-four. *McNamara v. Mac's Pipe and Drum, Inc.*, 21 BRBS 111 (1988).

The Board affirms the administrative law judge's determination that the presumption is rebutted where a doctor stated that claimant's permanently totally disabling breathing disorder is not causally related to his exposure to asbestos. Claimant's severe chronic obstructive pulmonary disease, is caused by prolonged cigarette smoking, and is not a restrictive lung disease, which is symptomatic of asbestosis. *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

The Board held that regardless of the absence of a definitive study regarding the relationship between certain chemicals and claimant's type of cancer, the opinions of physicians that, based upon existing scientific evidence, claimant's cancer is not related to his exposure to hazardous chemicals are a result of their professional assessment of the current available scientific evidence regarding the cause of claimant's injury and therefore are adequate to constitute specific and comprehensive evidence sufficient to rebut the presumption. *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990) (Lawrence, J., dissenting).

The Board affirmed the administrative law judge's decision that claimant's disability was due to supervening incidents, which were not the natural or unavoidable result of the initial work injury, as it was supported by a doctor's testimony, objective medical data, and the fact that claimant was capable of working until the incident. The Board rejected the contention of claimant and the Director that the Act requires employer to establish that the effects of the subject work injury were "overpowered and nullified" by the subsequent traumatic events in order to rebut the Section 20(a) presumption noting that the 9th Cir. in *Cyr v. Crescent Wharf & Warehouse Co.*, 211 F.2d 454 (9th Cir. 1954), adopted the position that a subsequent injury is compensable if it the natural and unavoidable result of a compensable work injury. *Wright v. Connolly-Pacific Co.*, 25 BRBS 161 (1991), *aff'd mem. sub nom. Wright v. Director, OWCP*, 8 F.3d 34 (9th Cir. 1993).

As the unequivocal evidence of record establishes that the 100 percent hearing impairment of the left ear is solely the result of a non work-related subsequent intervening cause, the Section 20(a) presumption is rebutted as a matter of law. *Davison v. Bender Shipbuilding & Repair Co., Inc.*, 30 BRBS 45 (1996).

The administrative law judge properly found that the medical evidence was sufficient to rebut the Section 20(a) presumption where physicians concluded that claimant's dystonia "cannot be attributed to [his] lumbar injury," that it "is not related to his accident nor to his work," and that "there is no causal connection." *Rochester v. George Washington University*, 30 BRBS 233 (1997).

The Board held that a doctor's opinion that claimant's work accident did not involve any injury to claimant's back, did not cause any worsening of his spondylolisthesis, and did not result in any different work restrictions attributable to claimant's back condition than were present prior to the accident, severed the causal link between the work accident and claimant's back condition. Accordingly, the Board affirmed the administrative law judge's finding that the Section 20(a) presumption was rebutted. *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd,* 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999).

The Ninth Circuit affirms the Board's affirmance of the administrative law judge's Section 20(a) rebuttal finding. The doctor's opinion that claimant's pre-existing 1979 back condition was not aggravated by the October 27, 1992 accident is sufficient to rebut the Section 20(a) presumption. Dr. Bernstein did not review claimant's entire medical file but pointed to specific evidence from all parts of the record to support his opinion. *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999), *aff'g* 31 BRBS 98 (1997).

The Fourth Circuit holds that employer's evidence is sufficient, as a matter of law, to rebut the Section 20(a) presumption. Specifically, the medical evidence of record does not contain a complaint of back pain until for at least 6 months after the work injury and a medical report 2 months after the work injury notes no complaints of back pain. Moreover, there is also medical evidence that claimant experienced back pain before the work injury to which any later back pain could have been attributed. The court states that as employer presented substantial evidence "casting doubt" on the causative link between the fall and the subsequent back pain, the presumption is rebutted. *Universal Maritime Corp. v. Moore,* 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997).

The First Circuit reverses the Board's holding that a doctor's opinion is insufficient to rebut the Section 20(a) presumption as it puts an impossible burden on employer to require that a doctor's opinion "exclude possibilities." In this case, the doctor stated that as claimant did not have fibrosis, his lung cancer was most likely the result of smoking. Notwithstanding his statement that he could not exclude asbestos exposure as a contributor to the cancer, the court affirmed the administrative law judge's determination that employer introduced sufficient evidence of non-causation to rebut the Section 20(a) presumption and to establish the lack of a causal relationship based on the record as a whole. *Bath Iron Works Corp. v. Director, OWCP* [*Harford*], 137 F.3d 673, 32 BRBS 45(CRT) (1st Cir. 1998).

The Board affirmed the administrative law judge's determination that employer rebutted the Section 20(a) presumption by presenting evidence which demonstrated that claimant's purpose for venturing into the depths of a darkened vessel was to smoke a marijuana cigarette in private and, therefore, that claimant's injury did not occur during the course of his employment. Specifically, the Board held that it was reasonable for the administrative law judge to rely on credible circumstantial evidence to rebut the presumption, and to find, based on the record as a whole, that claimant's injury occurred when he was on this personal frolic. *Compton v. Avondale Industries, Inc.*, 33 BRBS 174 (1999).

The Board affirmed the administrative law judge's finding that employer established rebuttal of the Section 20(a) presumption, as employer presented a medical opinion that noise played no role in claimant's hearing loss. *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000).

The Board reversed the administrative law judge's finding employer's evidence was insufficient to rebut the Section 20(a) presumption. The doctor unequivocally stated, to a reasonable degree of medical certainty, that claimant's work-related chemical exposures did not cause, contribute to, or aggravate claimant's condition. The fact that the doctor stated that there is no absolute certainty in the medical profession does not render his opinion equivocal. *O'Kelley v. Dep't of the Army/NAF,* 34 BRBS 39 (2000).

The Fifth Circuit holds that, on rebuttal, the employer cannot be made to "rule out" every conceivable connection between the death and the employment. Reiterating its position in *Conoco*, 194 F.3d 684, 33 BRBS 187(CRT), the Fifth Circuit holds that to rebut the Section 20(a) presumption, employer need only submit substantial evidence that the injury was not work-related. Requiring medical opinions that "affirmatively state" or "unequivocally state" creates a higher evidentiary standard than that stated in the statute. The court held that the administrative law judge properly found rebuttal in this case, as decedent's heart attack began at home and the credited evidence stated that it would have progressed regardless of where he was or what he was doing. Thus, the aggravation rule is inapplicable as the fact that the death occurred at work is mere coincidence. *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir. 2003), *cert. denied,* 124 S.Ct. 825 (2003).

Evaluating the Evidence

The Supreme Court holds that the "true doubt" rule violates Section 7(c) of the APA, which states that "except as otherwise provided by statute the proponent of a rule or order has the burden of proof." 5 U.S.C. §556(d). The Court construed "burden of proof" as the burden of persuasion as opposed to the burden of production. Claimant, therefore, must lose his case if the evidence is in equipoise. *Director, OWCP v. Greenwich Collieries*, ___ U.S. ___, 114 S.Ct. 2251, 28 BRBS 43 (CRT) (1994), *aff'g Maher Terminals, Inc. v. Director, OWCP*, 992 F.2d 1277, 27 BRBS 1(CRT) (3d Cir. 1993).

The Third Circuit, reversing the Board's affirmance of the administrative law judge's award of death benefits, held that Section 7(c) of the APA prohibits application of the "true doubt" rule to cases involving benefits under the Act because: 1) under the APA, the claimant bears the ultimate burden of persuasion by a preponderance of the evidence; and 2) the true doubt rule allows a claimant to prevail despite a failure to prove entitlement by a preponderance of the evidence. Inasmuch as claimant bears the ultimate burden of persuasion by a preponderance of the evidence in proving the work-relatedness of his injury pursuant to Section 20(a), and as it was not clear whether the administrative law judge ever considered whether the claimant's evidence satisfied that standard, the court vacated the Board's holding and remanded for the administrative law judge to make this determination, instructing him that if, on remand the evidence is determined to be in equipoise, the employer must prevail. *Maher Terminals, Inc. v. Director, OWCP*, 992 F.2d 1277, 27 BRBS 1 (CRT)(3d Cir. 1993), *aff'd sub nom. Director, OWCP v. Greenwich Collieries*, ___ U.S. ___, 114 S.Ct. 2251, 28 BRBS 43 (CRT) (1994).

The Fifth Circuit holds that claimant's condition is work-related based on "substantial evidence" of record; claimant is not required to prove the causal connection by a preponderance of the evidence. In this case, one doctor testified that it was "possible" that claimant experienced job-related stress sufficient to increase his blood pressure enough to contribute to the rupture of the aneurysm, while two other doctors found no causal relationship. *Noble Drilling Co. v. Drake*, 795 F.2d 478, 19 BRBS 6 (CRT) (5th Cir. 1986).

The Board held that claimant's subjective complaints buttressed by two medical opinions that claimant is totally disabled by the work accident constitute substantial evidence in support of the administrative law judge's finding of causation. *Sam v. Loffland Bros. Co.*, 19 BRBS 228 (1987).

The Board rejects employer's argument that because the doctor on whom the administrative law judge relied to find causation was unable to identify the specific chemicals which produced claimant's chemical hypersensitivity, his opinion was insufficient to support a finding of causation, where the doctor stated that claimant's symptoms were due to the cumulative effect of chemical exposures over many years and that any or all of the chemicals to which he was exposed could have played a part in his symptomology. *Peterson v. Columbia Marine Lines*, 21 BRBS 299 (1988).

The Board affirms the administrative law judge's finding that there is no causal relationship based on the record as a whole. The administrative law judge relied on one doctor who stated there is an absence of a causal relationship, and another doctor who stated that claimant's condition was "perhaps" related to a prior disease. This latter opinion, while too equivocal for rebuttal purposes, may be relied on in finding that causation is not established. *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94 (1988).

The Board affirms the finding of causation based on the record as a whole. The administrative law judge further found that, although employer established rebuttal, it could not carry the ultimate burden of persuasion (*see Parson's Corp*., 619 F.2d 38, 12 BRBS 234 (9th Cir. 1980)-pre *Greenwich Collieries*) because the medical evidence which employer submitted did not state with a reasonable degree of certainty whether decedent's exposure to a paint chemical had any effect on the development or progression of his Jakob-Creutzfeldt disease. *Stevens v. Tacoma Boatbuilding Co.,* 23 BRBS 191 (1990).

Where employer successfully rebuts the presumption, the administrative law judge must then weigh the relevant evidence as a whole. The administrative law judge's finding of causation must be affirmed if it is supported by substantial evidence, which is a lesser standard than the preponderance of the evidence standard. As the administrative law judge rationally relied in part on the expert testimony, and credited claimant's subjective complaints of headaches and dizziness, his finding that claimant's condition is work-related is affirmed. *Avondale Shipyards, Inc. v. Kennel*, 914 F.2d 88, 24 BRBS 46 (CRT) (5th Cir. 1990).

The District of Columbia Circuit held that in analyzing causation, the administrative law judge erred by placing the burden of proof on claimant. The court notes that the presumption is invoked and rebutted in this case, and the court remands the case for the administrative law judge to determine whether employer's evidence establishes that claimant's elbow condition was not causally related to his work accident. *Brown v. I.T.T./Continental Baking Co.*, 921 F.2d 289, 24 BRBS 75 (CRT)D.C. Cir. 1990).

The Board affirms the administrative law judge's weighing of the evidence based on the record as a whole, and his finding that claimant's left knee condition was aggravated by the work accident, and is not due solely to prior accidents and osteoarthritis as it is supported by substantial evidence. The Board also affirms the finding that claimant's right knee condition is the natural and unavoidable result of the left knee condition, as he rationally credited a doctor's opinion that claimant's favoring of his left leg exacerbated a pre-existing right leg degenerative condition. Where an employment-related injury aggravates, accelerates or combines with a non-work-related condition, the entire resultant disability is compensable. *Uglesich v. Stevedoring Services of America*, 24 BRBS 180 (1991).

The Board affirmed the administrative law judge's decision that claimant's disability was due to supervening incidents, which were not the natural or unavoidable result of the initial work injury, as it was supported by a doctor's testimony, objective medical data, and the fact that claimant was capable of working until the incident. The Board rejected the contention of claimant and the Director that the Act requires employer to establish that the effects of the subject work injury were "overpowered and nullified" by the subsequent traumatic events in order to rebut the Section 20(a) presumption noting that the 9th Cir. in *Cyr v. Crescent Wharf & Warehouse Co.*, 211 F.2d 454 (9th Cir. 1954), adopted the position that a subsequent injury is compensable if it the natural and unavoidable result of a compensable work injury. The Board also rejected employer's contention that in order to disprove a causal connection based on the record as a whole, employer must do so by a preponderance of the evidence. *Wright v. Connolly-Pacific Co.*, 25 BRBS 161 (1991), *aff'd mem. sub nom. Wright v. Director, OWCP*, 8 F.3d 34 (9th Cir. 1993).

The Fifth Circuit affirms the Board's decision to remand the case to the administrative law judge to reweigh the evidence, and the finding of no causation in the administrative law judge's decision on remand. The administrative law judge's reliance on the opinion of one doctor who was unaware of all of claimant's previous diagnoses, to the exclusion of six other doctors, was irrational. *Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22 (CRT) (5th Cir. 1994)

Where claimant initially injured his back in 1979 and then worked until herniated discs prevented his continued employment in 1985, the Board concluded that negative evidence, which supplements "positive" medical evidence and a credibility determination, is sufficient to rebut the Section 20(a) presumption and to establish the lack of causation based on the record as a whole. It noted that this case contains an unequivocal medical opinion of no causation, a rational credibility determination crediting that doctor, and negative evidence of the absence of back pain for six years following the initial injury. Therefore, the Board re-affirmed its decision that the administrative law judge rationally determined that claimant's 1985 condition was not caused by his 1979 work injury. *Holmes v. Universal Maritime Service Corp.*, 29 BRBS 18 (1995) (Decision on Recon.).

In this case, before the Board after remand from the Supreme Court's decision in *Greenwich Collieries*, ___ U.S. ___, 114 S.Ct. 2251, 28 BRBS 43(CRT) (1994), the Board held that it was within the administrative law judge's discretion to credit Dr. Derby's opinion over that of Dr. Yazdan, and it was rational for him to conclude that decedent's condition and death were not work-related. The Board held that the administrative law judge properly applied the preponderance of the evidence standard. The Board discussed the standard and noted it is not a quantitative standard; rather, it is a standard which denotes a superiority of weight -- the rule requires that the party having the onus must prove his position by more convincing evidence than the opposing party's evidence. The Board concluded that the preponderance of the evidence standard is well-defined and that it need not separately delineate the standard for use in cases arising under the Act: the standard, as defined by the Supreme Court and legal references, is sufficient. Consequently, the Board affirmed the administrative law judge's finding that, at best, the evidence is in equipoise, and such finding is enough to defeat claimant's claim under the preponderance of the evidence standard. *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996).

Where employer rebutted the presumption and demonstrated that decedent’s death was not related to his exposure to halothane gas in 1977 at employer’s facility, the administrative law judge then properly considered the record as a whole. As is within his discretionary powers, he then credited the opinion of claimants’ expert, Dr. Harrison, and held that decedent’s death was accelerated by his 1977 exposure to halothane gas. The Board thus affirmed the award of death benefits. *Casey v. Georgetown University Medical Center*, 31 BRBS 147 (1997).

Holding that the administrative law judge's decision to credit the opinion of Dr. Bernstein over the contrary opinion of Dr. Meyers was neither inherently incredible nor patently unreasonable, the Board affirmed the administrative law judge's determination, based on the record as a whole, that claimant's back condition was not causally related to his work accident. *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd,* 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999).

The Eighth Circuit affirmed the administrative law judge's finding that causation was established where claimant and employer each offered substantial but conflicting evidence and the administrative law judge weighed the evidence and credited the evidence in favor of claimant. *Meehan Service Seaway Co. v. Director, OWCP*, 125 F.3d 1163, 31 BRBS 114(CRT) (8th Cir. 1997), *cert. denied,* 118 S.Ct. 1301 (1998).

The administrative law judge erred in giving weight to the Section 20(a) presumption after employer rebutted it. Rather, the presumption drops from the case and the administrative law judge must weigh all the evidence to determine if a causal relationship is established. *Universal Maritime Corp. v. Moore,* 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997).

The Board affirmed the award of death benefits, as the administrative law judge rationally credited medical opinions that decedent did have asbestosis as a result of his work-related exposure to asbestos which was a substantial contributing factor to his ultimately fatal lung cancer. The administrative law judge acted within his discretion in giving less weight to the opinion of another doctor whom the administrative law judge found applied objective criteria in an overly rigid manner in determining whether decedent had asbestosis. *Parks v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 90 (1998), *aff'd mem.*, 202 F.3d 259 (4th Cir. 1999)(table).

The court affirmed the administrative law judge's denial of benefits for an alleged work-related heart attack, based on a weighing of the evidence as a whole. Specifically, the court affirmed the administrative law judge's crediting of employer's experts who opined that claimant suffered from chronic cardiovascular disease which meant claimant was likely to suffer a second heart attack regardless of his working conditions, and the experts' denial that the stressful conditions described by claimant in Japan were likely to have produced the heart attack he later suffered in Australia. The administrative law judge found the opinion of claimant's treating doctor less persuasive, as not supported by the relevant facts. *Hice v. Director, OWCP,* 48 F.Supp.2d 501 (D. Md. 1999).

The Board affirmed the administrative law judge's finding that claimant suffers from work-related asbestosis, as the administrative law judge rationally credited a medical opinion that claimant suffers from restrictive lung disease secondary to asbestos exposure as it was predicated on the credited x-ray reading and pulmonary function studies. *Flanagan v. McAllister Brothers, Inc.*, 33 BRBS 209 (1999).

The Board affirmed the administrative law judge's determination that claimant's hearing loss was unrelated to his employment based on the record as a whole, as it was within the administrative law judge's discretion to rely on the medical opinion that claimant's hearing loss was not due to noise, as opposed to the contrary opinions of examiners who did not review all the audiograms of record and did not discuss other factors such as non-noise notch audiogram patterns, speech receptions thresholds and speech discrimination results. *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000).

The Board held that the administrative law judge acted within his discretion in crediting the medical opinions that the angina claimant suffered at work brought to a head his coronary and psychological conditions as a result of work-related stress. Thus, the Board affirmed the administrative law judge's finding that claimant's heart and psychological conditions were related to his employment. *Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112 (2000), *aff'd,* 248 F.3d 54, 35 BRBS 41(CRT)(2d Cir. 2001).

The Board rejected claimant's assertion that the statements of her deceased husband, as to his exposure to asbestos at work and his injury, served to conclusively establish that he suffered from a work-related disease. Rather, the Board held that, pursuant to Section 23(a), decedent's statements, which are corroborated by other evidence, are sufficient to establish elements of a *prima facie* case. After invoking the Section 20(a) presumption and finding it rebutted, the administrative law judge is not required to credit decedent's statements in his review of the record as a whole. The evidence on the record as a whole supported the administrative law judge's determination that decedent's disease was not work-related. Therefore, the Board affirmed the denial of benefits. *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001).

The Fifth Circuit holds that substantial evidence supports the administrative law judge's finding that decedent's illness was caused by asbestos, where a physician board-certified in anatomic and clinical pathology testified that even though decedent had not been diagnosed with asbestosis, exposure to asbestos, combined with cigarette consumption caused decedent's lung cancer, provided there was documented significant exposure to asbestos, and the administrative law judge expressly found that there was significant exposure. *Cooper/T. Smith Stevedoring Co., Inc. v. Liuzza*, 293 F.3d 741, 36 BRBS 18 (CRT) (5th Cir. 2002), *aff'g on other grounds* 35 BRBS 112 (2001).

The Board affirms the administrative law judge's finding, based on the evidence as a whole, that claimant sustained a cervical spine injury as a result of his work accident with SSA on March 10, 1998, as it is supported by substantial evidence. Specifically, the Board held that the administrative law judge acted within his discretion by crediting the opinion of claimant's treating physician, Dr. O'Hara, that claimant sustained an injury to his cervical spine as a result of the March 10, 1998, work incident, over the contrary opinion of Dr. London. *Carpenter v. California United Terminals*, 37 BRBS 149 (2003), *vacated on other grounds on recon.,* 38 BRBS ___ (2004).

Section 20(b)

Section 20(b) provides: "In any proceeding for the enforce-ment of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary . . . that sufficient notice of such claim was given." See, e.g., Fortier v. General Dynamics Corp., 15 BRBS 4 (1982) (Kalaris, J., concurring and dissenting), aff'd mem., 729 F.2d 1441 (2d Cir. 1983). The Board previously took the position that Section 20(b) applies only to Section 13, which sets forth the requirements for filing a claim, and that it does not apply to Section 12, which sets forth the requirements for filing of the notice of injury with employer. See Horton v. General Dynamics Corp., 20 BRBS 99 (1987); Jackson v. Ingalls Shipbuilding Div., Litton Systems, Inc., 15 BRBS 299 (1983) (Miller, J., concurring and dissenting); Carlow v. General Dynamics Corp., 15 BRBS 115 (1982) (Miller, J., dissenting) (overruling Kirkland v. Air America, Inc., 13 BRBS 1108 (1981) (Smith, C.J., dissenting); Mattox v. Sun Shipbuilding & Dry Dock Co., 15 BRBS 162 (1982)(Miller, J., dissenting).

Several of the United States Courts of Appeals, however, disagreed with this position and held Section 20(b) applicable to Section 12. See, e.g., Stevenson v. Linens of the Week, 688 F.2d 93 (D.C. Cir. 1982), rev'g 14 BRBS 304 (1981); Avondale Shipyards, Inc. v. Vinson, 623 F.2d 1117 (5th Cir. 1980); United Brands Co. v. Melson, 594 F.2d 1068 (5th Cir. 1979), aff'g 6 BRBS 503 (1977); Duluth, Missabee & Iron Range Ry. Co. v. U.S. Dept. of Labor, 553 F.2d 1114 (8th Cir. 1977); see also Janusziewicz v. Sun Shipbuilding & Dry Dock Co., 677 F.2d 286, 14 BRBS 705 (3d Cir. 1982), rev'g 13 BRBS 1052 (1982), where the Third Circuit, assuming without deciding that the Section 20(b) presumption was applicable to Section 12 notice of injury, stated that claimant's prior application for non-occupational sickness benefits was sufficient to rebut the presumption. Thus, the Board applied the Section 20(b) presumption in cases arising within these circuits. See Forlong v. American Security & Trust Co., 21 BRBS 155 (1988); Gardner v. Railco Multi-Construction Co., 19 BRBS 238 (1987), vacated on other grounds, 902 F.2d 71, 23 BRBS 69 (CRT) (D.C. Cir. 1990); Kulick v. Continental Baking Corp., 19 BRBS 115 (1986).

However, in Shaller v. Cramp Shipbuilding & Dry Dock Co., 23 BRBS 140 (1989), the Board reconsidered its position, and held that, pursuant to Section 20(b), it is presumed, in the absence of substantial evidence to the contrary, that employer has been given sufficient notice of the injury pursuant to Section 12. To the extent that prior decisions are inconsistent with this holding, they were overruled in Shaller. See also Steed v. Container Stevedoring Co., 25 BRBS 210 (1991).

Under the Section 20(b) presumption, part of employer's burden is to establish that it filed in compliance with Section 30, see Section 30 of the deskbook, before it can prevail pursuant to Section 13(a). Nelson v. Stevens Shipping & Terminal Co., 25 BRBS 277 (1992) (Dolder, J., dissenting); Hartman v. Avondale Shipyard, Inc., 23 BRBS 201, vacated on other grounds on recon., 24 BRBS 63 (1990); McQuillen v. Horne Brothers, Inc., 16 BRBS 10 (1983); Fortier, 15 BRBS at 4; Peterson v. Washington Metropolitan Area Transit Authority, 13 BRBS 891 (1981). In Speedy v. General Dynamics Corp., 15 BRBS 352, 354 n.4 (1983)(Ramsey, C.J., concurring in result only)(Miller, J., dissenting), the Board, citing to Keats v. Horne Bros., Inc., 14 BRBS 605, 607 (1982), stated that an exception to the above rule has been recognized in those instances where the Section 13 limitation period has run prior to the time that employer gains knowledge of the injury for Section 30 purposes. Keats, however, does not address the Section 20(b) presumption, and the statement in Speedy is of dubious legal value in light of employer's burden under Section 20(b). In order to rebut the Section 20(b) presumption in this context, employer must prove, perhaps by negative inference, that it never gained knowledge or received notice of the injury for Section 30 purposes. See Stark v. Washington Star Co., 833 F.2d 1025, 20 BRBS 40 (CRT) (D.C. Cir. 1987); Steed, 25 BRBS at 219.

Digests

The Board reverses the finding that the disability claim was untimely under Section 13. As there is no evidence that decedent was aware of the relationship between his disease, disability and covered employment before he filed his claim, employer did not rebut the Section 20(b) presumption that the claim was timely filed. Martin v. Kaiser Co., Inc., 24 BRBS 112 (1990) (Dolder, J., concurring in the result only).

Under the facts of this case, the Board affirms the administrative law judge's finding that claimant's contacts with employer's agent, PMA, were sufficient to impute to employer knowledge of a work injury for which compensation liability was possible. Employer did not dispute that PMA is its agent, see Derocher, 17 BRBS 249 (1985). Since PMA had knowledge of the injury, and employer failed to file a Section 30(a) report, the Section 13 statute of limitations was tolled pursuant to Section 30(f), and employer failed to overcome the Section 20(b) presumption. Steed v. Container Stevedoring Co., 25 BRBS 210 (1991).

The Board reversed the administrative law judge's finding that the death benefits claim was timely filed in this asbestosis case after holding that employer's lack of knowledge rebutted the Section 20(b) presumption as a matter of law. In the instant case, employer did not have knowledge of decedent's work-related death before the claim was filed in 1992, well after the limitations period expired in May 1989. Therefore, employer's failure to file a Section 30(a) report cannot toll the statute of limitations as the claim was already time-barred by the time employer gained knowledge of the injury or death. *Blanding v. Oldam Shipping Co.*, 32 BRBS 174 (1998), *rev'd in pert. part sub nom. Blanding v. Director, OWCP,* 186 F.3d 232, 33 BRBS 114(CRT) (2d Cir. 1999).

The Second Circuit reversed the Board's holding in *Blanding v. Oldam Shipping Co.*, 32 BRBS 174 (1998), that the death benefits claim was not timely filed, holding that employer and carrier did not rebut the Section 20(b) presumption. The court held that the carrier's controversion indicating that the date employer learned of the decedent's death was "unknown" was insufficient to rebut the presumption as it does not indicate that employer lacked knowledge of the decedent's work-related death before the claim was filed in 1992, and as there is no evidence in the record indicating when the carrier learned of the decedent's death. The court also held that claimant's returned claim form (undeliverable by the post office) did not constitute substantial evidence that employer lacked knowledge of the decedent's work-related death before 1992, and that the carrier presented no evidence that it lacked knowledge of the decedent's work-related death prior to 1992. Lastly, the court held that employer and carrier's failure to file a Section 30(a) report tolled the statute of limitations under Section 30(f). Thus, the court reinstated the administrative law judge's award of death benefits *Blanding v. Director, OWCP*, 186 F.3d 232, 33 BRBS 114(CRT)(2d Cir. 1999), *rev'g in pert. part* 32 BRBS 174 (1998).

The First Circuit holds that the Section 20(b) presumption applies to occupational disease claims filed pursuant to Section 13(b)(2). *Bath Iron Works Corp. v. U.S. Dept. of Labor [Knight]*, 336 F.3d 51, 37 BRBS 67(CRT) (1st Cir. 2003).

Section 20(c) and (d)

See Section 3(c).